

such action may be taken without adversely affecting the national security, the maintenance of friendly relations with other nations, the efficient operation of the Agency, or the administrative feasibility of servicing requests for access to such records.

(b) Access for research purposes to the classified foreign policy records in the Agency's custody will be governed by the regulations of the Department of State with respect thereto, as set forth in part 6, chapter II of title II of the Code of Federal Regulations. Application for such access may be made to the Chief, Customer Outreach and Oversight Staff, at the address listed in §212.33(a) of this part. That officer, or his/her designee, in consultation with the Director, Historical Office, Department of State, or his/her designee, will determine the action to be taken and will so advise the researcher.

PART 213—COLLECTION OF CLAIMS

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AUTHORITY: Sec. 621 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381; subpart B also issued under 5 U.S.C. 5514; 5 CFR 550, subpart K. Subpart C also issued under 31 U.S.C. 3720A.

Subpart A—General Provisions

SOURCE: 50 FR 38521, Sept. 23, 1985, unless otherwise noted.

§213.1 Purpose.

These regulations prescribe the procedures to be used by the Agency for International Development (“AID”) in the collection of claims owed to AID and to the United States.

§213.2 Scope.

(a) *Applicability of Federal Claims Collection Standards.* Except as set forth in this part or otherwise provided by law, AID will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the Federal Claim Collection Standards (“FCCS”) of the General Accounting Office and Department of Justice, 4 CFR parts 101–105.

(b) This part is not applicable to:

(1) Claims arising out of loans for which compromise and collection authority is conferred by section 635(g)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2395(g)(2).

(2) Claims arising from investment guaranty operations for which settlement and arbitration authority is conferred by section 635(i) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2395(i).

(3) Claims against any foreign country or any political subdivision thereof, or any public international organization.

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(4) Claims where the A.I.D. Administrator or his designee determines that the achievement of the purposes of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.*, or any other provision of law administered by A.I.D. require a different course of action.

§213.3 Subdivision of claims.

A debtor's liability arising from a particular contract or transaction (for example, each individual Supplier's Certificate and Agreement, Form AID 282) shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

§213.4 Late payment, penalty and administrative charges.

(a) Except as otherwise provided by statute, loan agreement or contract, A.I.D. will assess:

(1) *Late payment charges* (interest) on unpaid claims at the higher of the Treasury tax and loan account rate or the prompt payment interest rate established under section 12 of the Contract Disputes Act of 1978.

(2) *Penalty charges* at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(3) *Administrative charges* to cover the costs of processing and calculating delinquent claims.

(b) Late payment charges shall be computed from the date of *mailing* or *hand delivery* of the notice of the claim and interest requirements.

(c) *Waiver.* (1) Late payment charges are waived on any claim or any portion of a claim which is paid within 30 days after the date on which late payment charges begin to accrue.

(2) The 30 day period may be extended on a case-by-case basis if it is determined that an extension is appropriate.

(3) AID may waive late payment, penalty and administrative charges under the FCCS criteria for the compromise of claims (41 CFR part 103) or upon a determination that collection of the charges would be against equity and good conscience or not in the best interests of the United States, including for example:

(i) Pending consideration of a request for reconsideration, administrative re-

view or waiver under a permissive statute,

(ii) If repayment of the full amount of the debt is made after the date upon which interest and other charges become payable and the estimated costs of recovering the residual balance exceed the amount owed, or

(iii) If collection of interest or other charges would jeopardize collection of the principal of the claim.

§213.5 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment (usually a Bill for Collection, Form AID 7-129) shall inform the debtor of:

(1) The basis for the claim;

(2) The amount of the claim;

(3) The date when payment is due 30 days from date of mailing or hand delivery of the initial demand for payment;

(4) The provision for late payment (interest), penalty and administrative charges, if payment is not received by the due date.

§213.6 Collection by offset.

(a) Collection by administrative offset will be undertaken only on claims which are liquidated or certain in amount. Offset will be used whenever feasible and not otherwise prohibited. Offset is not required to be used in every instance and consideration should be given to the debtor's financial condition and the impact of offset on Agency programs or projects.

(b) The procedures for offset in this section do not apply to the offset of Federal salaries under 5 U.S.C. 5514 or offset under section 640A of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2399.

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(c) Before offset is made, the agency will provide the debtor with written notice informing the debtor of:

(1) The nature and amount of the claim;

(2) The intent of the agency to collect by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(3) The right of the debtor to inspect and copy the records of the agency related to the claim;

(4) The right of the debtor to a review of the claim within the agency. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request to the billing office for a review of the claim within the agency by the payment due date stated in the notice. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion must be paid by the date stated in the notice to avoid late payment, penalty and administrative charges. If A.I.D. either sustains or amends its determination, it shall notify the debtor of its intent to collect the claim, with any adjustments based on the debtor's response by administrative offset unless payment is received within 30 days of the mailing of the notification of its decision following a review of the claim.

(5) The right of the debtor to offer to make a written agreement to repay the amount of the claim.

(6) The notice of offset need not include the requirements of paragraph (c) (3), (4) or (5) of this section if the debtor has been informed of the requirements at an earlier stage in the administrative proceedings, e.g., if they were included in a final contracting officer's decision.

(d) A.I.D. will promptly make requests for offset to other agencies known to be holding funds payable to a debtor and, when appropriate, place the name of the debtor on the "List of Contractors Indebted to the United States." A.I.D. will provide instructions for the transfer of funds.

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(e) A.I.D. will promptly process requests for offset from other agencies and transfer funds to the requesting agency upon receipt of the written certification required by §102.3 of the FCCS.

[50 FR 38521, Sept. 23, 1985, as amended at 51 FR 26544, July 24, 1986]

§213.7 Disclosure to consumer reporting agencies and contracts with collection agencies.

(a) A.I.D. may disclose delinquent debts, other than delinquent debts of current Federal employees, to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and the FCCS.

(b) A.I.D. may enter into contracts with collection agencies in accordance with 31 U.S.C. 3718 and the FCCS.

Subpart B—Salary Offset Provisions

SOURCE: 51 FR 26544, July 24, 1986, unless otherwise noted.

§213.8 Scope.

(a) This subpart sets forth AID's procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the United States Government.

(b) This subpart applies to:

(1) Current employees of AID and other agencies who owe debts to AID.

(2) Current employees of AID who owe debts to other agencies.

(c) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g. travel advances in 5 U.S.C. 5705 and employee training expenses 5 U.S.C. 4108).

(d) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay or ministerial adjustments in pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) These regulations do not preclude an employee from:

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(1) Requesting waiver of erroneous payment of salary, travel, transportation and relocation expenses and allowances;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount of validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under subpart A or other regulations.

§ 213.9 Coordinating offset with another federal agency.

(a) *When AID is owed the debt.* When AID is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until AID provides the agency with a written certification that the debtor owes AID a debt (including the amount and basis of the debt and the due date of payment) and that AID has complied with these regulations.

(b) *When another agency is owed the debt.* AID may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of payment) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

§ 213.10 Determination of indebtedness.

(a) In determining that an employee is indebted to AID and that 4 CFR parts 101 through 105 have been satisfied and that salary offset is appropriate, AID will review the debt to make sure that it is valid and past due.

(b) If AID determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until AID is assured that the requirements have been met.

§ 213.11 Notice requirements before offset.

Except as provided in § 213.8, salary offset will not be made unless AID first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary ("Notice of Intent") will state:

(a) That AID has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) AID's intention to collect the debt by salary offset, i.e. by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the salary intent;

(d) An explanation of that late payment, penalties and administrative costs will be charged in accordance with § 213.4, unless excused in accordance with § 213.4(c);

(e) The employee's right to inspect and copy agency records relating to the debt;

(f) The employee's right to enter into a written agreement with AID for a repayment schedule differing from that proposed by AID, so long as the terms of the repayment schedule proposed by the employee are agreeable to AID;

(g) The right to a hearing conducted by a hearing official on AID's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a request for a hearing filed by the employee as prescribed by § 213.12;

(h) That the timely filing of a request for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the request for a hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

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(2) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an AID official to whom communications should be directed.

§213.12 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a request for a hearing, that is received by AID not later than 30 calendar days from the date of AID's notice described in §213.11 if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) AID's proposed offset schedule (including percentage).

(b) The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) If the employee files a request for hearing later than the 30 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

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§213.13 Result if employee fails to meet deadlines.

An employee waives the right to a hearing and will have his or her disposable pay offset in accordance with offset schedule set forth in the Notice of Intent if the employee:

(a) Fails to file a petition for a hearing as prescribed in §213.12; or

(b) Is scheduled to appear and fails to appear at the hearing.

§213.14 Hearings.

(a) If an employee timely files a request for a hearing under §213.12 AID shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by an appropriately designated hearing official; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) AID will have the burden of going forward to prove the existence of the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§213.15 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings and conclusions, considering all of the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing; and

(d) The amount, frequency, beginning date and duration of the salary offset, if applicable.

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§ 213.16 Review of agency records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy agency records related to the debt must send a letter to the official designated in § 213.11(n) stating his or her intention. The letter must be received by AID within 30 calendar days of the date of the Notice of Intent.

(b) *AID's response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, AID will notify the employee of the location and time when the employee may inspect and copy AID records related to the debt.

§ 213.17 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by AID with 30 calendar days of the date of the Notice of Intent.

(b) *AID's response.* AID will notify the employee whether the employee's proposed written agreement for repayment is acceptable. AID may accept a repayment agreement instead of proceeding by offset. In making this determination, AID will balance AID's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, AID will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(c) *Procedures.* If the employee and AID enter into a written agreement to repay instead of salary offset, the debt will be repaid in accordance with the provisions of the agreement and the procedures of § 213.18 will not apply.

§ 213.18 Procedures for salary offset.

Unless AID agrees otherwise, the procedures for salary offset are as follows:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the cur-

rent pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay which is that part of current basic pay, special pay, retainer pay, or in the case of an employee not entitled to pay, other authorized pay remaining after the deduction of any amount required by law to be withheld.

(c) *Types.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposal pay for an officially established pay interval, the collection by salary offset must be made in installment deductions.

(d) *Amount and duration of installment deductions.* (1) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposal pay from which the deduction is made, unless the employee has agreed to a greater amount.

(2) Installment payments of less than \$25 per pay period will be accepted only in the most unusual circumstances.

(3) Installment deductions will be made over a period of not greater than the anticipated period of employment.

(e) *When deductions may begin.* (1) Salary offset will begin as of the date stated in the Notice of Intent, unless a hearing has been requested.

(2) If there has been a timely request for a hearing, salary offset will begin as of the date stated in the written decision provided after the hearing.

(f) *Additional offset provisions—*(1) *Liquidation from final check.* If employment ends before salary offset is completed, the remaining debt will be liquidated by offset from subsequent payments of any nature due the employee from AID as of the date of separation (e.g. final salary payment, lump-sum leave, etc).

(2) *Offset from other payments.* If the debt cannot be liquidated by offset from any final check, the remaining debt will be liquidated by offset from

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later payments of any kind due the former employee from the United States.

§ 213.19 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (of all or portion of a debt) collected under this subpart will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 213.20 Refunds.

(a) AID will refund promptly to the appropriate individual amounts offset under these regulations when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) AID is directed by an administrative or judicial order to make a refund.

(b) Refunds do not bear interest unless required or permitted by law or contract.

Subpart C—Collection of Debts by Tax Refund Offset

SOURCE: 60 FR 40456, Aug. 9, 1995, unless otherwise noted.

§ 213.21 Purpose.

This subpart establishes procedures for AID to refer past due debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to AID.

§ 213.22 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due and legally enforceable debt owed to the United States.

(b) A past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except for judgement debt or other debts specifically exempt from this requirement, is referred within 10 years after AID's right of action accrues;

(2) In the case of individuals, is at least \$25.00;

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(3) In the case of business debtors is at least \$100.00;

(4) In the case of individual debtors, cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a);

(5) Is ineligible for or cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(6) Is the debt of a debtor (or in the case of an individual debtor, his or her spouse) for whom AID records do not show debtor has filed for bankruptcy under title 11 of the United States Code or for whom AID can clearly establish at the time of the referral that an automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect;

(7) Has been disclosed by AID to a consumer reporting agency as authorized by 31 U.S.C. 3711(f); and

(8) For which AID has given notice, considered any evidence, and determined that the debt is past-due and legally enforceable under the provisions of this subpart.

§ 213.23 Administrative charges.

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

§ 213.24 Pre-offset notice.

(a) Before AID refers a debt to the IRS, it will notify or make a reasonable attempt to notify the debtor that:

(1) The debt is past due;

(2) Unless repaid within 60 calendar days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(3) The debtor has at least 60 days from the date of the notice to present evidence that all or part of such debt is not past-due or not legally enforceable; and

(4) AID will consider any evidence presented by the debtor and determine whether any part of such debt is past-due and legally enforceable.

(b) The notice will explain to the debtor the manner in which the debtor may present such evidence to AID.

§ 213.25 Reasonable attempt to notify and clear and concise notification.

(a) *Reasonable attempt to notify.* AID will have made a reasonable attempt to notify the debtor under § 213.24(a) it is used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103 (m)(2) or (m)(4), unless AID receives clear and concise notification from the debtor that notices are to be sent to an address different from the address obtained from the IRS.

(b) *Clear and concise notification.* Clear and concise notification means that the debtor has provided AID with written notification containing the debtor's name and identifying number (as defined in the Internal Revenue Code, 26 U.S.C. 6109), the debtor's new address, and the debtor's intent to have the notices sent to the new address.

§ 213.26 Consideration of evidence and notification of decision.

(a) AID will give the debtor at least 60 days from the date of the pre-offset notice to present evidence. Evidence that collection of the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

(b) If the evidence presented is not considered by an employee of AID but by an entity or person acting for AID, the debtor will have at least 30 days from the date the entity or person notifies the debtor that all or part of the debt is past-due and legally enforceable to request review by an employee of AID of any unresolved dispute.

(c) AID will provide the debtor with its decision and the decision of any entity or person acting for AID on to whether all or part of the debt is past-due and legally enforceable. The decision will include a statement of the basis or principal bases for the decision.

§ 213.27 Change in conditions after submission to IRS.

AID will promptly notify the IRS if, after submission of a debt to the IRS for offset, AID:

(a) Determines that an error has been made with respect to the information submitted to the IRS;

(b) Receives a payment or credits a payment, other than an IRS offset, to the account of the debtor;

(c) Receives notice that the debtor has filed for bankruptcy under title 11 of the United States Code or the debt has been discharged in bankruptcy;

(d) Receives notice that an offset was made at the time when the automatic stay provisions of 11 U.S.C. 362 were in effect;

(e) Receives notice that the debt has been extinguished by death; or

(f) Refunds all or part of the offset amount to the debtor.

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